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HENRY PETERS AND PAMELA PETERS,	:	UNITED STATES DISTRICT
	:	COURT DISTRICT OF NEW JERSEY
	:	
Plaintiffs,	:	Case No. 07-CV-2210 (KSH-PS)
	:	
v.	:	CIVIL ACTION
ROLAND DAVID, NATIONAL	:	
COMMERCIAL BUSINESS CREDIT;	:	
R. DAVID & ASSOCIATES PA, LLC;	:	
FINANCIAL SERVICES GROUP, LLC;	:	
CREDIT MANAGEMENT & RECOVERY	:	
SERVICES, INC.; GOLDSTAR	:	
MORTGAGE; ALEXANDER DY; PNC	:	Joint Proposed
BANK; CAROL ZAGORIC; JOANNE	:	Jury Verdict Sheet
RAGGI; FGC COMMERCIAL MORTGAGE	:	
FINANCE; JOURNEYMAN TITLE	:	
AGENCY, INC.; CHICAGO TITLE	:	
INSURANCE COMPANY; LYNN	:	
LAZARO; JOHN DOE 1 through	:	
10; and XYZ INC., ten names	:	
being fictitious and unknown	:	
to the plaintiffs, the person	:	
or parties intended being	:	
the persons or parties, if	:	
any,	:	
Defendants.	:	
	:	

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**Defendant's Proposed Verdict Sheet**

**SECTION I**

Plaintiffs' claim against the Defendant Dy

1. Have the plaintiffs proven by a preponderance of the evidence that Defendant Dy is a "creditor," as defined under the Federal Truth in Lending Act?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "Yes," then please proceed to question 2.

If your answer is "No," then your deliberation is complete and your foreperson should go to question 4.

2. Have the plaintiffs proven by a preponderance of the evidence that transaction with Defendant Dy is subject to the Federal Truth in Lending Act?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "Yes," then please proceed to question 3.

If your answer is "No," then your deliberation is complete and your foreperson should go to question 4.

3. Have the plaintiffs proven by a preponderance of the evidence that Defendant Dy violated the Federal Truth in Lending Act?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "Yes," then please proceed to question 3.

If your answer is "No," then your deliberation is complete and your foreperson should go to question 3 .

4. Do you find that plaintiffs proven by a preponderance of the evidence that defendant violated the New Jersey Consumer Fraud Act 56:8-2 against plaintiff?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then please proceed to question 5.

If your answer is “No,” then your deliberation is complete and your foreperson should go to question 5.

5. Do you find that plaintiffs proven by a preponderance of the evidence that defendant violated the New Jersey Consumer Fraud Act 56:8-2.2 against plaintiff?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then please proceed to question 6.

If your answer is “No,” then your deliberation is complete and your foreperson should go to question 6.

6. Do you find that plaintiffs proven by a preponderance of the evidence that defendant violated the New Jersey Consumer Fraud Act 56:8-2.22 against plaintiff?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then please proceed to question 7.

If your answer is “No,” then your deliberation is complete and your foreperson should go to question 7.

7. Do you find that plaintiffs proven by a preponderance of the evidence that the transaction with defendant is a “federally related mortgage”?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then please proceed to question 8.

If your answer is “No,” then your deliberation is complete and your foreperson should go to section II.

8. Do you find that plaintiffs proven by a preponderance that the transaction between the

plaintiffs and Dy is subject to the Federal Real Estate Settlement Procedures Act?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then please proceed to question 9.

If your answer is “No,” then your deliberation is complete and your foreperson should go to question Section II.

9. Do you find that the plaintiffs have proven by a preponderance that the defendant violated the Federal Real Estate Settlement Procedures Act?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then proceed to Section II.

If your answer is “No,” then your deliberation is complete and your foreperson should go to Section II.

### **Section II Defendant’s Affirmative Defenses**

10. Has the defendant proven by a preponderance of the evidence that the plaintiffs executed the contract of sale and deed?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to question 11.

11. Has the defendant proven by a preponderance of the evidence that the plaintiffs conduct was inequitable or in bad faith?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to question 12.

12. Has the defendant proven by a preponderance of the evidence that the plaintiffs come to Court with “unclean hands”?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to question 13.

13. Has the defendant proven by a preponderance of the evidence that the plaintiffs claims are barred by “equitable estoppels”?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to question 13.

14. Has the defendant proven by a preponderance of the evidence that he was not the cause proximate or otherwise of any alleged damages to the plaintiffs?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to question 14.

15. Has the defendant proven by a preponderance of the evidence that any alleged damages to the plaintiffs were cause by the acts or omissions of the other defendants, Roland David, National Commercial Business Credit, R. David & Associates, Carol which defendant Dy had no control?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to question 16

16. Has the defendant proven by a preponderance of the evidence that any alleged damages

to the plaintiffs were cause by the acts or omissions of the the other defendants,  
Roland David, National Commercial Business Credit, R. David & Associates, Carol  
which defendant Dy had no control?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then your proceed to question 16

17. Has the defendant proven by a preponderance of the evidence that the plaintiffs were responsible for their own alleged damages under contributory or comparative negligence?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answer is “Yes,” then you have completed your deliberation.

If your answer is “No,” then proceed to Section III.

18. If your answer is Yes to questions 3,4,5,6 or 9 and No for questions 10-17, proceed to section V entitled Plaintiffs Damages.

### **Section III Counterclaims of the Defendant**

19. Has the defendant proven by clear and convincing evidence proven his claim against the plaintiffs for fraud, false pretenses, and misrepresentation?

Yes\_\_\_\_\_ No\_\_\_\_\_

If your answer is “Yes,” then please proceed to question 19.

If your answer is “No,” then your deliberation is complete and your foreperson should go to question 19.

19. Have the plaintiffs proven by a preponderance of the evidence his claim against the plaintiffs for respondeat superior negligence?

Yes\_\_\_\_\_ No\_\_\_\_\_

If your answer is “Yes,” then your deliberation is complete.

If your answer is “No,” then your deliberation is complete and your foreperson should go to Section VI.

20. If your answer is Yes to any question 18 or 19, go to Section V entitled Damages.

## Defendant's Claims

## **Section V Damages (Parties Agree)**

### **Plaintiffs' claims**

We assess damages in the amount of \_\_\_\_\_.

2. We the jury find in favor of the plaintiffs on the claim under the NJ Consumer Fraud Act  
56-8.2 as against defendant.

a. Roland David

b. Goldstar Mortgage      Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability \_\_\_\_\_

c. Joanne Raggi              Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability \_\_\_\_\_

d. Carol Zagoric Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

e. Journeyman Title Agency Inc. Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

f. PNC Bank Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

g. Lynn Lazaro Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

h. Chicago Title Insurance Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

i. Alexander Dy Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

We assess damages in the amount of \_\_\_\_\_.

**3.** We the jury find in favor of the plaintiffs on the claim under NJ Consumer Fraud Act of 56-8.2.2 as against defendant.

a. Goldstar Mortgage Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

b. Joanne Raggi Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

c. Carol Zagoric Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

d. Journeyman Title Agency Inc. Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

e. PNC Bank Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

f. Lynn Lazaro Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

g. Chicago Title Insurance Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

h. Alexander Dy Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

We assess damages in the amount of \_\_\_\_\_.

**4.** We the jury find in favor of the plaintiffs on the claim under NJ Consumer Fraud Act of 56-8.22 as against defendant. We assess damages in the amount of \_\_\_\_\_.

a. Goldstar Mortgage Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

b. Joanne Raggi Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

c. Carol Zagoric Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

- d. Journeyman Title Agency Inc. Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- e. PNC Bank Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- f. Lynn Lazaro Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- g. Chicago Title Insurance Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- h. Alexander Dy Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

We assess damages in the amount of \_\_\_\_\_.

5. We the jury find in favor of the plaintiffs on the claim under RESPA as against defendant. We assess damages in the amount of \_\_\_\_\_.

- a. Goldstar Mortgage Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- b. Joanne Raggi Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- c. Carol Zagoric Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- d. Journeyman Title Agency Inc. Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- e. PNC Bank Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- f. Lynn Lazaro Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- g. Chicago Title Insurance Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_
- h. Alexander Dy Yes \_\_\_\_\_ No \_\_\_\_\_ Percentage of Liability\_\_\_\_\_

We assess damages in the amount of \_\_\_\_\_.

#### **Defendant's Claims**

1. We the jury find in favor of the defendant on the claim under fraud, false pretenses and misrepresentations as against plaintiffs. We assess damages in the amount of \$\_\_\_\_\_.

2. We the jury find in favor of the defendant on the claim under Respondeat Superior Negligence as against plaintiffs. We assess damages in the amount of \$\_\_\_\_\_.

**Section VI (Parties Agree)**

**Signature**

FOREPERSON

Sign Name:\_\_\_\_\_

Print Name:\_\_\_\_\_

Dated: \_\_\_\_\_, 2012

**Plaintiffs' Proposed Verdict Sheet**

Do you find that by the preponderance of the evidence that Defendant Dy made a credit transaction with the Plaintiffs?

Answer: Yes No

[If the answer to question 1 is no, please STOP, you are finished with the TILA section]

2. Do you find by the preponderance of the evidence that the Defendants provided Ms. Peters with two copies of the Notice of Right to Cancel on August 24, 2006, the date of the loan closing?

Answer: Yes No

[If the answer to question 1 is yes, please STOP, you are finished with the TILA section]

2. Do you find by the preponderance of the evidence that the Defendants provided Ms. Peters with two copies of the Notice of Right to Cancel after August 24,, 2006, the date of the loan closing?

Answer: Yes No

[If the answer to question 2 is yes, please continue to question 3, if the answer to question 2 is no, please continue to [a question regarding statutory damages].]

3. If you find by a preponderance of the evidence that the Defendants provided Ms. Peters with two copies of the Notice of Right to Cancel after August 24,, 2006, do you find by a preponderance of the evidence that the Notices would have clearly and conspicuously informed a reasonable consumer of his or her right to cancel the loans?

Answer: Yes No

[If the answer to question 3 is yes, please STOP, you are finished with the TILA section]

Do you find that by a preponderance of the evidence that Plaintiffs received disclosure of the cost of the transaction between them and Alexander Dy before the transaction?

Answer: \_ Yes \_ No

5. Do you find that by a preponderance of the evidence that Plaintiffs received disclosure of the cost of the transaction between them and Alexander Dy after the transaction?

Answer: \_ Yes \_ No

6. Do you find that by a preponderance of the evidence that Plaintiffs have the right to rescind or cancel this transaction?

Answer: \_ Yes \_ No

[If the answer to question 3 is no, please STOP, you are finished with the TILA section. If your answer is yes, please continue.]

7. What is the amount of finance charges charged to Plaintiff?

\$ \_\_\_\_\_

8. What is the amount of the actual damages to Plaintiff?

\$ \_\_\_\_\_

## **CONSUMER FRAUD ACT**

1. On Plaintiff Mr. and Mrs. Peters's Consumer Fraud Act claim, do you find that Plaintiff Mr. and Mrs. Peters have proved that it is more likely than not that Defendant Alexander Dy engaged in predatory credit transaction through an unconscionable commercial practice?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. On Plaintiff Mr. and Mrs. Peters's Consumer Fraud Act Claim, do you find that Plaintiff Mr. and Mrs. Peters has proved that it is more likely than not that Defendant Alexander Dy made a false promise or pretense in connection with the transaction between them?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. On Plaintiff Mr. and Mrs. Peters's Consumer Fraud Act Claim, do you find that Plaintiff Mr. and Mrs. Peters has proved that it is more likely than not that Defendant Alexander Dy omitted material information in connection with the transaction between them?

Yes \_\_\_\_\_ No \_\_\_\_\_

**ASCERTAINABLE LOSS/DAMAGES**

5. If you answered "yes" to Question 1, 2 or 3 do you find that Plaintiff Mr. and Mrs. Peters incurred an ascertainable loss causally related to entering the transaction with Alexander Dy?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. If the answer to Question 5 is "yes", then how much money do you award Plaintiff Mr. and Mrs. Peters for her losses?

\$\_\_\_\_\_

7. If you answered "yes" to Question 4, do you find that Plaintiff Mr. and Mrs. Peters is entitled to compensation for the losses she has incurred due as a result of the Alexander Dy transaction?

Yes \_\_\_\_\_ No \_\_\_\_\_

8. If the answer to Question 7 is "yes", then how much money do you award Plaintiff Mr. and Mrs. Peters for her losses?

\$\_\_\_\_\_

7. If you answered "yes" to Question 4, do you find that Plaintiff Mr. and Mrs. Peters is entitled to compensation for the losses she has incurred due as a result of the Alexander Dy credit transaction?

Yes \_\_\_\_\_ No \_\_\_\_\_

8. If the answer to Question 7 is "yes", then how much money do you award Plaintiff Mr. and Mrs. Peters for her losses?

\$\_\_\_\_\_

RESPA

Verdict Sheet

1. Do you find that by the preponderance of the evidence that transaction between the Plaintiffs and Alexander Dy involved in whole or in part a "federally related mortgage loan.?

Answer: \_ Yes \_ No

[If the answer to question 1 is no, please STOP, you are finished with the TILA section]

2. Do you find that by the preponderance of the evidence that transaction between the Plaintiffs and Alexander Dy involved giving or receiving "any fee, or thing of value pursuant to any agreement or understanding?

Answer: \_ Yes \_ No

3. Do you find that by the preponderance of the evidence that transaction between the Plaintiffs and Alexander Dy involved giving or receiving a portion "of any charge...for the rendering of a real estate settlement service...other than for services actually performed.

Answer: \_ Yes \_ No

4. Do you find that by the preponderance of the evidence that transaction between the Plaintiffs and Alexander Dy that there was a overcharge?

Answer: \_ Yes \_ No

4. Do you find that by the preponderance of the evidence that transaction between the Plaintiffs and Alexander Dy there was a disclosure of costs of the credit?

Answer: \_ Yes \_ No

6. What was the amount of the overcharge(s)?

\$ \_\_\_\_\_

Did Defendant Dy did use of a statement in writing—  
that is materially false;  
respecting his financial condition;  
on which Plaintiff reasonably relied and  
that Dy caused to be made or published with intent to deceive?

Answer: \_ Yes \_ No

When Defendant failed to plaintiffs any money or any consideration for the conveyance of their home as agreed did that constitute fraud or defalcation while activating in a fiduciary capacity,, embezzlement,, or larceny?

Answer: \_ Yes \_ No

Did Defendant Dy obtain money,, property, services,, or an extension of credit, which was obtained by (A) false pretenses,, a false representation, or actual fraud"?

Answer: Yes No

Did Defendants's acts constitute willful and malicious injury to Plaintiffs and their property?

Answer: Yes No

Did Defendant intend to hinder delay, or defraud Plaintiff?

Answer: Yes No

Did Defendant Dy knowingly and fraudulently made a false oath or account?

Answer: Yes No

Did Defendant Dy knowingly and fraudulently presented or used a false claim?

Answer: Yes No

Did Defendant Dy knowingly and fraudulently gave,, offered,, received,, or attempted to obtain money,, property,, or advantage,, or a promise of money,, property,, or advantage,, for acting or forbearing to act?

Answer: Yes No

#### **Defendant Objects to Plaintiffs' Proposed Jury Verdict Sheet**

Pursuant to Judge Shwartz' instructions, the parties were to prepare joint proposed instructions, voire dire, and verdict sheet that does not include any alleged facts. The main objective is to properly list the elements of the claims, counterclaims and affirmative defenses. Contrary to the Court's

direction, plaintiff's proposed verdict questions include new allegations of fact and theories of law. The plaintiffs are proposing instructions in relation to bankruptcy dischargeability issues and elements that are not to be determined by the jury. Plaintiffs' instructions include elements for intentional misrepresentation, which is not a cause of action. These instructions may confuse and mislead the jury. The additions pertaining to intentional misrepresentation are frivolous, futile and prejudicial to defendant Dy.

Defendant objects to the Plaintiffs' Proposed Jury Verdict Sheet Defendant Dy has filed for Chapter 7 Bankruptcy and has received a final discharge of debt. As a result, if any liability and/or damages are determined, these may be dischargeable. The plaintiffs are attempting to determine that any awards are non-dischargeable pursuant to Section 523 of the Bankruptcy Court. The Bankruptcy Court has the sole authority to determine non-dischargeability of a debt. The proposed verdict questions is prejudicial towards Dy, as he will not have an opportunity for the Bankruptcy Court to determine the issue of dischargeability of any damages, if any.

The plaintiffs' proposed verdict questions improperly raises new alleged theories of law and factual allegations. These new factual allegations and legal theories such as "predatory consumer transaction" are not in the pleadings or the

Final Pretrial Order. The plaintiffs instructions for New Jersey Consumer Fraud Act includes instructions on omissions which never were pleaded. Plaintiffs allegations are based on affirmative act. Plaintiffs attempt to amend their complaint without the party making a proper application to amend pursuant to Federal Rules. In addition, the plaintiffs instructions include improper elements under the statutes and regulations. These amendments are futile and would prejudice defendant Dy. The elements of the statutes and regulations either do not apply or are ambiguous. Plaintiffs' proposed verdict sheet may confuse and mislead the jury.

**Plaintiffs' Response**

Plaintiff's reply to Defendant's objection:

The jury verdict tracks the statutes elements and in plain language asks the jury for its determinations of the facts of this case from the testimony and evidence in the trial.

Regarding the bankruptcy questions, Defendant Dy filed a Chapter 7 bankruptcy petition and Plaintiffs filed an action to except their claims from his discharge. The bankruptcy Judge decided that this Court should make a determination regarding Plaintiffs claims which Plaintiffs argues included the issues which a fact finder would determine dischargeability.